UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MAINE RIGHT TO LIFE COMMITTEE, INC., ET AL.,	)	
	)	
PLAINTIFFS	)	
	)	
v.	)	**Civil No. 95-261-B-H**
	)	
FEDERAL ELECTION COMMISSION, ET AL.,	)	
	)	
DEFENDANTS	)	

ORDER ON FEDERAL ELECTION COMMISSION'S MOTION FOR RECONSIDERATION OR RELIEF UNDER RULES 59(e) AND 60(b)

The motion for reconsideration or relief is **DENIED**. I inquired specifically of the FEC's lawyer at the hearing what factual issues were in dispute so that I could assess whether consolidation of the hearing with the trial on the merits was appropriate under Fed. R. Civ. P. 65(a)(2). The plaintiffs had moved from the outset for such a consolidation and the FEC had filed no written objection, despite the requirements of Local Rule 19. The FEC's lawyer was unable to point to a single factual issue in dispute and it was therefore apparent that only legal issues remained to be resolved. As a result, there was absolutely no reason to delay matters for a trial on the merits.

The FEC had a full opportunity to argue the legality of its regulation and briefed the issue fully. It is specious to maintain that its legal argument should be materially different when the

question is success on the merits rather than likelihood of success on the merits. The FEC has pointed me to no requirement that a certified administrative record of its rulemaking proceeding be available to the court before making a decision. In its briefing, the FEC cited extensive portions of the rulemaking history and my decision referred to this history. It is true that I did not have the thousands of pages that the FEC has now filed, but this was not an adjudicative proceeding where I was reviewing an administrative record. Instead, the issue before me was whether the FEC's rule as promulgated was consistent with the United States Supreme Court decisions in Buckley v. Valeo, 424 U.S. 1 (1976) and FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986), and the First Circuit decision in Faucher v. FEC, 928 F.2d 468 (1st Cir. 1990), cert. denied, 502 U.S. 820 (1991). My opinion candidly indicated that I believed the FEC had the better of the argument on its regulation so far as the logic of language is concerned, but that the statements by the U.S. Supreme Court and the First Circuit Court of Appeals in the relevant decisions foreclosed the option the FEC had elected. There is no suggestion in the FEC's motion papers how the rulemaking record would or should alter that conclusion, which derives from the language of the court decisions, not the administrative record.

Finally, even now, the FEC declines to tell the court what new arguments it would make if it were afforded the opportunity to take another bite at the apple. Clearly, it was incumbent on the FEC to show me that granting this motion for reconsideration or relief has some point and is not a futile exercise. The absence of such a showing makes the motion appear to be a procedural ploy that would only engender delay in the inevitable outcome.

For all these reasons, the motion is **DENIED**.

SO ORDERED.

DATED AT PORTLAND, MAINE THIS 8TH DAY OF MARCH, 1996.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE